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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

JAYDEN LEWIS CHANDLER, a Minor, etc. Plaintiff and Appellant, v. VALLEJO MAINE I PARTNERS, LLP et al., Defendants and Respondents.	A133272 (San Francisco County Super. Ct. No. CGC-09-486137)

Shortly before midnight on June 19, 2008, Charles Chandler II was murdered in the common area of the Marina Vista Apartments (Marina Vista) in Vallejo. Chandler was not a tenant at Marina Vista, but was on his way to visit an aunt who lived there. Chandler's four-year-old son, Jayden Lewis Chandler,[1] brought this wrongful death action, by and through his guardian ad litem David Lewis, against Marina Vista's owners and operators, its management and security services providers, and against the Solano County Affordable Housing Foundation (defendants).[2] The trial court granted summary judgment in favor of defendants, finding plaintiff had failed to present any admissible

[1] We will refer to Charles Chandler II as Chandler and Jayden Lewis Chandler as plaintiff.

[2] Defendants are Vallejo Maine I Partners, LLP, Vallejo Maine II Partners, LLP, The John Stewart Company, VAHF-Maine Carolina, LLC, and Solano County Affordable Housing. The security services company, Blacktalon Enterprises, Inc., is not a party to the instant appeal.

evidence raising a triable issue of material fact as to either duty or causation. Plaintiff contends the trial court committed reversible error by denying plaintiff's request for a continuance, finding defendants had met their burden, and concluding plaintiff failed to present admissible evidence raising a triable issue of fact as to duty and causation. We affirm.

I. BACKGROUND

A. The Property

1. Gates and Locks

Marina Vista is a 20-building, 236-unit apartment complex located on a 10-acre site in downtown Vallejo.[3] Defendants knew of frequent recurring criminal activity on the premises of the complex. A wrought iron fence surrounds the perimeter of the complex. There are 21 pedestrian gates, as well as additional automobile gates that allow access to Marina Vista. The fence and gates were installed for the protection of Marina Vista tenants. Marina Vista's property manager testified that prior to Chandler's murder, the gates were supposed to be locked. However, the locks were "constantly broken." As a result, the property manager had vendors coming out to the property to repair the locks "[e]very other day."

2. Guards, Curfew, and Trespasser Policy

Marina Vista utilized professional, armed security guards to patrol the complex. In June 2008, security guards patrolled the premises Sunday from 5:00 p.m. to 11:00 p.m., from 3 p.m. to 11:00 p.m. Monday through Thursday, 3:00 p.m. to 1:00 a.m. Friday, and from 5:00 p.m. Saturday to 1:00 a.m. Sunday. After 11:00 p.m. during the week and midnight on the weekend, three random vehicle patrols took place during the night.

Part of the responsibilities of the security guards included questioning people in the common areas to verify whether they were entitled to be in the complex. If the

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[3] According to defendants' points and authorizes in support of their motion for summary judgment, Marina Vista was "originally built by a private developer utilizing HUD/FHA insured loans and project-based Section 8 grants."

individual questioned was neither a tenant nor a guest, security asked the person to leave. In order to further restrict the number of people in the common areas, Marina Vista instituted a 10:00 p.m. curfew, which the security guards were responsible for enforcing. If a tenant or guest was observed in the common areas after curfew and that person was not in the process of just arriving at or leaving the property, security would ask the person to return to his or her apartment or to leave the property. The security guards wrote activity reports each day, noting at regular intervals the activity or lack thereof occurring at the premises.

By all accounts, the security guards were very effective in protecting Marina Vista tenants and their guests. The property manager testified that the guards were good at deterring crime and removing trespassers. Prior to Chandler's murder, the property manager thought to herself that increased security guard coverage would be beneficial. The property manager initially testified that she could not remember if she ever acted on this belief. Later, the property manager indicated that she mentioned the issue of extended guard coverage to her supervisor, but the property manager could not recall if her supervisor ever got back to her. The property manager explained that she did not know whether funds had been available to her to increase the guard coverage. Rather, she stayed within the parameters of the then-existing security contract.

3. Lighting

The property manager testified the lighting at Marina Vista was an additional security feature to aid in deterring crime at Marina Vista. In fact, the year before Chandler's death, the exterior lighting of the buildings was upgraded to 400 watts.

B. Chandler's Murder

On the evening of Thursday, June 19, 2008, Chandler went to Marina Vista to spend the night at his aunt's apartment and to smoke some marijuana there. As he entered the complex through one of the many gated entrances, Chandler called his aunt to tell her he was close to her building. Chandler, however, never made it to his aunt's building. While walking there, Chandler was shot and killed in a common area.

On the evening of the murder, security guards had been on duty from 3:00 p.m. to 11:00 p.m. Officers from the Vallejo Police Department had been dispatched to Marina Vista twice that day for unrelated matters. In the afternoon, police officers were on site looking for a criminal suspect in one of the buildings. Later that evening, police officers returned in response to a report of a fight involving 50 people.[4]

Chandler's aunt testified that the lights at Marina Vista were working on the night of the murder. In fact, she was able to see her nephew's body at the scene from 20 feet away.

The property manager testified that she did not know if the gates were operational and locked on the night of Chandler's murder.

Prior to Chandler's murder, defendants were unaware of any other shooting death at Marina Vista.

C. Criminal Investigation

Jonathan Walker was a known trespasser at Marina Vista. The guards were authorized to remove him from the premises by any means necessary. Prior to Chandler's murder, Walker had verbally threatened various Marina Vista tenants with bodily harm. The property manager testified that she could not recall Walker ever threatening any tenants with weapons. She also could not recall how long before Chandler's murder that the verbal threats had occurred.

Two months after Chandler's murder, Walker and P.A. were arrested in connection with a robbery occurring at Marina Vista. On August 21, 2008, while at the county jail, P.A. told police that he had information about Chandler's murder. P.A. said that Walker killed Chandler "as a result of a fight that happened some time ago at [another] apartment complex in Vallejo." Initially, P.A. said that he had not witnessed the murder, but only heard about it from Walker, who had confessed to killing Chandler several days after the murder. When police confronted P.A. with a statement from his

[4] In his declaration in support of defendants' summary judgment motion, a security guard on duty at Marina Vista stated that when he left work at 11:00 p.m. on June 19, 2008, the police were no longer at Marina Vista.

girlfriend in which she said that P.A. told her that he had witnessed the murder, P.A. eventually admitted that he in fact had witnessed the murder.

After several attempts to obtain the police report from the Vallejo Police Department, plaintiff's counsel eventually acquired the report from the city attorney's office in May 2010. The report was subsequently turned over to the defendants' counsel "with an informal agreement that the parties would not use the police report for any purpose which might unnecessarily prejudice the investigation and/or prosecution of the criminal suspects" in Chandler's murder. Following the release of the police report, plaintiff's counsel communicated with the Vallejo Police Department to determine the status of the criminal investigation and discovered that it was "a cold case because of the dire financial straits" of the police department.

D. Ensuing Civil Action

By second amended complaint, dated June 3, 2010, plaintiff alleged that defendants, knowing that dangerous persons frequented Marina Vista and that "massive amounts of criminal activity" occurred there, nonetheless failed to maintain the premises in a safe condition, provide adequate security, and warn others of the unsafe conditions. Plaintiff did not, however, identify in discovery the specific acts defendants should have taken to prevent the murder. On November 22, 2010, defendants moved for summary judgment on the basis that they did not owe Chandler a duty to protect him from third-party criminal acts, and that plaintiff was unable to establish any substantial causal link between defendants' omission and Chandler's death. On December 29, 2010, plaintiff sought a six-month continuance on the ground that the Vallejo Police Department had recently reopened the previously inactive murder investigation regarding Chandler's death. The court granted the motion and the hearing for defendants' summary judgment motion was renoticed for June 15, 2011.

On May 27, 2011, plaintiff requested a four-month continuance of the summary judgment hearing on the ground that the ongoing criminal investigation prevented him from pursuing certain evidence in opposition to summary judgment, such as taking the

depositions of key witnesses, including primary suspect Walker, as well the various law enforcement personnel involved in the criminal investigation. That request was denied.

In opposing summary judgment, plaintiff argued that it was "highly foreseeable" that Walker—a known trespasser who had engaged in drug dealing and made threats of violence against Marina Vista tenants—would have attacked someone after 11:00 p.m., "when no physical security presence remained at the complex." Plaintiff asserted that defendants' failure to enforce the security measures that were "already on the books" was a substantial factor in Chandler's murder. Plaintiff presented no expert testimony to support his position that the murder could have been prevented if there had been better security at Marina Vista.

On June 15, 2011, the trial court issued a tentative ruling granting defendants' motion for summary judgment on the ground that plaintiff had failed to present admissible evidence as to the specifics of Chandler's murder and, thus, failed to raise a triable issue of fact as to duty or causation. The order confirming this decision was filed on July 14, 2011. The instant appeal followed.

II. DISCUSSION

A. Standard of Review

We review the trial court's grant of summary judgment de novo. (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65, 67-68.) In reviewing summary judgment motions, we consider all the material evidence properly set forth in the moving papers, except matters to which objections have been made and sustained by the trial court. (Code Civ. Proc., § 437c, subds. (b), (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) We consider all inferences reasonably deduced from the evidence unless such inferences are contradicted by other inferences or evidence. (Code Civ. Proc., § 437c, subd. (c); *Aguilar* at p. 856.) We do not consider conclusory statements or inferences " '. . . derived from speculation, conjecture, imagination, or guesswork.' " (*Waschek v. Department of Motor Vehicles* (1997) 59 Cal.App.4th 640, 647.)

It is the defendant's burden on a motion for summary judgment to show by supporting evidence that one or more element of the plaintiff's cause of action cannot be

established as a matter of law. (*Aguilar v. Atlantic Richfield Co., supra,* 25 Cal.4th at pp. 853, 855.) The burden then shifts to the plaintiff to show by specific, admissible evidence that a triable issue of material fact exists. (Code Civ. Proc., § 437c, subd. (*o*)(2); *Aguilar* at pp. 849, 850-851.) If the plaintiff fails to meet this burden, the motion should be granted. (*Aguilar* at pp. 855, 857.)

B. Request for Continuance

Plaintiff argues that the trial court erred as a matter of law by denying his second request for a continuance. Code of Civil Procedure section 437c, subdivision (h) provides, in relevant part: "If it appears from the affidavits submitted in opposition to a motion for summary judgment . . . that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just."

"When a party makes a good faith showing by affidavit demonstrating that a continuance is necessary to obtain essential facts to oppose a motion for summary judgment, the trial court must grant the continuance request. [Citation.] 'Continuance of a summary judgment hearing is not mandatory, however, when no affidavit is submitted or when the submitted affidavit fails to make the necessary showing under [Code of Civil Procedure] section 437c, subdivision (h). [Citations.] Thus, in the absence of an affidavit that requires a continuance under section 437c, subdivision (h), we review the trial court's denial of appellant's request for a continuance for abuse of discretion.' " (*Park v. First American Title Co.* (2011) 201 Cal.App.4th 1418, 1428.)

As we recently explained in *Johnson v. Alameda County Medical Center* (2012) 205 Cal.App.4th 521, "[a]n opposing party's declaration in support of a motion to continue the summary judgment hearing should show the following: (1) '*Facts* establishing *a likelihood that controverting evidence may exist* and *why* the information sought is *essential* to opposing the motion'; (2) 'The *specific reasons* why such evidence cannot be presented at the present time'; (3) 'An estimate of the *time* necessary to obtain such evidence'; and (4) 'The specific steps or procedures the opposing party intends to

utilize to obtain such evidence.' (Weil & Brown, Cal. Practice Guide: Civil Proc. Before Trial (The Rutter Group 2012) ¶ 10:207.15, p. 10-83 (rev. 1, 2011.)" (*Id.* at pp. 531-532.)

Here, the declaration of plaintiff's counsel explains that "[b]ased on the open and active status of the Chandler homicide investigation and the related fact that . . . Walker is now being actively sought by multiple law enforcement agencies as a suspect in three separate murders, [p]laintiff would like to continue the trial and related dates for another four [] months to allow the investigation to be completed and to avoid potentially interfering with the investigation, as well as to avoid prejudice in [p]laintiff's . . . opposition to [d]efendant[s'] pending motion for summary judgment for which [p]laintiff would like to use testimony from [P.A. and his girlfriend], as well as . . . Walker, if possible." Elsewhere in the declaration, however, plaintiff's counsel states that "[i]t is unknown how long the investigation of the Chandler [homicide] will take to complete since the whereabouts of . . .Walker[] are currently unknown." Counsel added that "it is not anticipated the investigation can be completed until . . . Walker is apprehended." Counsel further explained that it "has long been anticipated by [p]laintiff's counsel that depositions of [P.A. and his girlfriend] would be taken . . . and used in opposition to any defense motion for summary judgment, as well as the officers of the Vallejo Police Department who were involved in investigating the murder and preparing the police report."

Counsel's declaration fell short in several respects and was insufficient to support a continuance. "Code of Civil Procedure section 437c, subdivision (h) requires more than a simple recital that 'facts essential to justify opposition may exist.' " (*Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 715.) "The statute cannot be employed as a device to get an automatic continuance by every unprepared party who simply files a declaration stating that unspecified essential facts may exist. The party seeking the continuance must justify the need, by detailing both the particular essential facts that may exist and the specific reasons why they cannot then be presented." (*Id.* at pp. 715–716.) Plaintiff here failed to detail the facts he expected to discover and to provide an estimate of the time necessary to obtain such evidence. Indeed, counsel's declaration

demonstrates that discovery likely would be forestalled for an indeterminable time, as the investigation was contingent upon the apprehension of Walker, whose whereabouts were then unknown. Taken to its logical conclusion, the request for a continuance was a request for a permanent stay. Plaintiff therefore was not entitled to a mandatory continuance under Code of Civil Procedure section 437c, subdivision (h).

The trial court was, nevertheless, free to grant a continuance under its broad discretionary power. (*Lerma v. County of Orange, supra*, 120 Cal.App.4th at p. 716.) In deciding whether to continue a summary judgment to permit additional discovery courts will consider: (1) how long the case has been pending; (2) how long the requesting party had to oppose the motion; (3) whether the continuance motion could have been made earlier; (4) the proximity to trial; (5) any prior continuances for the same reason; and (6) the question whether the evidence sought is truly essential to the motion. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2012) ¶ 10:208.1, p. 10-85.)

Here, the case had been pending since March 2009. Since May 2010—more than a year before the filing of the summary judgment motion—plaintiff had been in possession of the police report, naming the suspect and eyewitnesses. Moreover, by all accounts, the investigation was inactive until the end of December 2010. Other than his informal agreement not to impede the criminal investigation, plaintiff offers no explanation for failing to conduct discovery during this period. It is unclear how discovery would have interfered with a dormant criminal investigation.[5]

Last, but certainly not least, the trial court had previously granted a six-month continuance of the summary judgment motion based on the same reason. Yet, during this period nothing had changed. Plaintiff simply failed to conduct any meaningful discovery during the more than two years that elapsed between the initiation of suit and the close of

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[5] In fact, case law strongly suggests that civil discovery may proceed despite the prospect of a criminal investigation. (See *Bains v. Moores* (2009) 172 Cal.App.4th 445, 482-486; *Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 885.)

discovery. Given this lack of diligence in conducting discovery, the court reasonably denied plaintiff's request for a continuance to conduct further discovery that was contingent upon a criminal investigation that arguably had no end in sight.

C. Defendants' Liability for Criminal Acts on Property

"A defendant may owe an affirmative duty to protect another from the conduct of third parties if he or she has a 'special relationship' with the other person. [Citations.] Courts have found such a special relationship in cases involving the relationship between business proprietors such as shopping centers, restaurants, and bars, and their tenants, patrons, or invitees . . . . [W]e [have] recognized as 'well established' the proposition that a proprietor's 'general duty of maintenance, which is owed to tenants and patrons, . . . include[s] the duty to take reasonable steps to secure common areas against foreseeable criminal acts of third parties that are likely to occur in the absence of such precautionary measures.' [Citations.]" (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 235-236, italics omitted.) In a case where the "plaintiff, injured on [the defendant's] premises by the criminal assault of unknown assailants, seeks to recover damages . . . on the theory that [the defendant] breached [its] duty of care . . ., the plaintiff must show that the defendant owed [him] a legal duty of care, the defendant breached that duty, and the breach was a proximate or legal cause of [his] injury. [Citations.]" (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 772, italics omitted (*Saelzler*).)

" '[A] high degree of foreseeability is required in order to find that the scope of a landlord's duty of care includes the hiring of security guards.' " (*Delgado v. Trax Bar & Grill, supra,* 36 Cal.4th at p. 238, italics omitted.) Here, defendants provided security guards on the premises, but plaintiff argues the security levels and methods of deployment were inadequate, and this failure allowed Chandler's murder to take place. "When an injury occurs despite a defendant's efforts to provide security or supervision, it is relatively easy to claim that, ipso facto, the security or supervision provided was ineffective. Without more, such claims fail. For analysis purposes, courts assume duty and breach and focus upon causation." (*Thompson v. Sacramento City Unified School*

Dist. (2003) 107 Cal.App.4th 1352, 1370.) Similarly, for our analysis of this issue on appeal, we assume duty and breach, and look directly to the issue of causation.

In order "to demonstrate actual or legal causation, the plaintiff must show that the defendant's act or omission was a 'substantial factor' in bringing about the injury." (*Saelzler, supra,* 25 Cal.4th at p. 774, citing *Nola M. v. University of Southern California* (1993) 16 Cal.App.4th 421, 427 (*Nola M.*).) "[T]he plaintiff must do more than simply criticize, through the speculative testimony of supposed security 'experts,' the extent and worth of the defendant's security measures, and instead must show the injury was actually caused by the failure to provide greater measures." (*Saelzler* at p. 774, citing *Nola M.* at p. 435.) " 'A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant.' [Citation .]" (*Saelzler* at pp. 775-776, italics omitted.) Liability cannot be established by a showing of " 'abstract negligence,' " for instance by a showing of the defendant's failure to provide security that conformed to the plaintiff's expert's notion of adequacy, without any causal nexus between that failure and the resulting injuries. (*Lopez v. McDonald's Corp.* (1987) 193 Cal.App.3d 495, 515-516.)

In *Saelzler, supra,* 25 Cal.4th 723, the plaintiff, an employee of Federal Express, went to an apartment complex owned by the defendants to deliver a package. She saw two men loitering outside a security gate that had been propped open, and another man already on the premises. As she returned from the apartment to which she had attempted to deliver the package, the three men confronted her, beat her, and tried to rape her. Afterward, the three men fled and were never apprehended. (*Id.* at p. 769.) The plaintiff sued the defendants, alleging that they knew dangerous people frequented their premises, but failed to maintain their premises in a safe condition, failed to provide adequate security, and failed to warn others of the unsafe condition. (*Ibid.*) The defendants moved for summary judgment, contending the plaintiff could not establish a substantial causal link between her injury and their omissions. (*Ibid.*) In opposition, the plaintiff noted that police officers had advised defendants and their security firm that they should hire

daytime security patrols. (*Id.* at pp. 770-771.) She also filed a declaration from a security expert, who opined that the attack would not have occurred if there had been daytime security and a greater effort to keep the gates repaired and closed. (*Id.* at p. 771.)

The court assumed for purposes of discussion that the defendants had a duty to provide a reasonable degree of security on the premises and that they breached that duty by failing to keep the gates locked and functioning and to provide additional daytime security. However, the court agreed with defendants that the evidence failed to show that either breach contributed to the plaintiff's injuries. (*Saelzler, supra,* 25 Cal.4th at p. 775.) Because the identity of the assailants was unknown, they might have been tenants who were authorized to be on the premises. (*Id.* at p. 776.) Thus, despite the "speculative opinion of plaintiff's expert," the plaintiff could not show that defendant's breaches were a substantial factor in causing her injuries. (*Ibid.*) The court noted that crimes can occur despite the maintenance of the highest level of security, and quoted its earlier pronouncement that " 'proof of causation cannot be based on . . . an expert's opinion based on inferences, speculation and conjecture.' " (*Id.* at p. 777, quoting *Leslie G., supra,* 43 Cal.App.4th at p. 488.) The court concluded the plaintiff could not show that roving guards would have encountered her assailants or prevented the attack. (*Saelzler, supra,* at p. 777.)

In reaching this conclusion, the court distinguished *Rosh v. Cave Imaging Systems, Inc.* (1994) 26 Cal.App.4th 1225 (*Rosh*). (*Saelzler, supra,* 25 Cal.4th at p. 776.) The plaintiff in *Rosh* was shot by a disgruntled former employee, Hua, and sued the employer's security firm. The evidence showed the security firm had repeatedly ignored the plaintiff's instructions to bar Hua from the premises. In those circumstances, noted the court in *Saelzler,* the *Rosh* court properly found the defendant's negligence to be a substantial factor in causing the plaintiff's injuries. (*Saelzler* at p. 776, citing *Rosh, supra,* 26 Cal.App.4th at p. 1236.) In *Saelzler,* on the other hand, the defendants did not have advance notice that a particular assailant was on the premises. (*Saelzler, supra,* 25 Cal.4th at p. 776.)

Plaintiff relies on *Ambriz v. Kelegian* (2007) 146 Cal.App.4th 1519, 1524, in an attempt to distinguish *Saelzler, supra,* 25 Cal.4th 763. In *Ambriz,* the assailant was a transient who had been seen around the complex being aggressive and frightening the tenants. (*Ambriz, supra,* 146 Cal.App.4th at p. 1524.) *Ambriz* specifically distinguished its facts from those in *Saelzler* on the basis that it was clear the third-party criminal was not a tenant of the complex or otherwise authorized to enter or be on the premises, and that it was "more likely than not . . . [the] attacker used the same method of entry on the day of the [attack] that he and others had been using over an extended period of time . . ., entry through the malfunctioning doors . . . ." (*Ambriz, supra,* at p. 1538.)

Ambriz v. Kelegian, supra, 146 Cal.App.4th 1519 has a significant feature lacking in the instant case: a reasonable inference from the evidence linking the third party's opportunity to commit the criminal act to the lapse in security, thereby providing a basis upon which a jury could conclude that the defendants' negligence was a substantial cause of Chandler's death. Here, there was no evidence whatsoever that the killer would have been prevented by a different gate mechanism, additional lighting, or by additional roving guards.[6] Even assuming for the sake of argument that Walker was the alleged killer, there is nothing in the record to suggest that defendants were aware of his presence on the day of the murder, and they failed to prevent his access or otherwise remove him from the property. As stated in *Saelzler, supra,* 25 Cal.4th at page 779, "in a given case, direct or circumstantial evidence may show the assailant took advantage of the defendant's lapse (such as a failure to keep a security gate in repair) in the course of committing his

[6] We deny Chandler's request to take judicial notice of certain postjudgment evidence, to wit: the felony complaint dated June 30, 2011, and amended felony complaint dated August 25, 2011, both charging Walker with the murder of Chandler. "Appellate courts rarely accept postjudgment evidence or evidence that is developed after the challenged ruling is made." (*In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1416.) Here, the documents for which judicial notice is requested do not inform whether the trial court's order was correct at the time the judgment was entered, and we decline to notice them. (See *ibid.*) In any event, even if we were to judicially notice the challenged documents, this evidence is not probative with respect to the issue of causation.

attack, and that the omission was a substantial factor in causing the injury. Eyewitnesses, security cameras, even fingerprints or recent signs of break-in or unauthorized entry, may show what likely transpired at the scene. In the present case no such evidence was presented . . . ."

Saelzler, supra, 25 Cal.4th 763 had a significant feature absent here, expert testimony on causation, yet the court still found an absence of causation. In the instant case, plaintiff merely speculates that defendants "should have properly utilized their already existing security measures, including maintaining their gates, enforcing their trespassing and curfew policies, ensuring there was adequate lighting, and spending the money on security which [defendants] had already allocated for that purpose." However, there was no direct or circumstantial evidence that the killer entered through a broken gate, or even that a broken gate was the only way he could have entered or left Marina Vista. Additionally, there was no evidence whatsoever regarding the time the killer entered the property. In other words, the killer could have entered Marina Vista at a time when the guards were in full force. Even viewing plaintiff's evidence in the best possible light, the evidence merely shows the speculative possibility that additional guards and/or functioning security gates, along with better lighting and enforcement of the curfew and trespassing policy, *might* have prevented the murder.

This is not a case in which the defendants had advance warning of this particular threat. As noted above, the court in *Rosh* concluded that a security firm's repeated failures to keep a disgruntled former employee off the premises, despite requests that it do so, could be a substantial factor in facilitating the attack by the former employee. (*Rosh, supra,* 26 Cal.App.4th at p. 1236.) Likewise, in *Madhani v. Cooper* (2003) 106 Cal.App.4th 412, 413, 417-418, the court concluded there was a triable issue of fact as to whether a landlord's breach of duty was a legal cause of injuries the plaintiff sustained when another tenant attacked her. There, as in *Rosh,* however, the landlord had advance notice of the particular threat, since the plaintiff had previously reported the assailant's hostile and threatening behavior numerous times to the property manager. (*Madhani* at p. 414.) There was no notice in this case that rises to the level of that shown

in *Rosh* and *Madhani.* Even assuming arguendo that Walker, a known trespasser, allegedly killed Chandler, there was no indication Walker had specifically threatened Chandler at Marina Vista prior to the murder. Moreover, prior to Chandler's death, defendants were unaware of any fatal shootings at Marina Vista. Marina Vista indisputably is located in a high crime area and, as evidenced by the plethora of incident reports, plagued by assaults and other violent crime. However, defendants' evidence showed that they took steps to control the situation, hiring armed security guards to patrol the premises at night, and making frequent and regular attempts to repair broken locks and nonfunctioning gates. The record indicates that, in June 2008, these guards were on daily duty on Sunday from 5:00 p.m. to 11:00 p.m., from 3 p.m. to 11:00 p.m. Monday through Thursday, 3:00 p.m. to 1:00 a.m. Friday, and from 5:00 p.m. Saturday to 1:00 a.m. Sunday. After 11:00 p.m. during the week and midnight on the weekend, three random vehicle patrols took place during the night. In the year before Chandler's death, defendants upgraded the lighting at Marina Vista. Defendants imposed a nighttime curfew, which the security guards enforced. Defendants' security logs indicated their security guards regularly broke up fights, forced aggressive tenants or trespassers to leave the area, and removed tenants or others from the area who were involved in criminal or gang activity.

"No one can reasonably contend that even a significant increase in police personnel will prevent all crime or any particular crime." (*Noble v. Los Angeles Dodgers, Inc.* (1985) 168 Cal.App.3d 912, 918.) As one court has stated: " 'It is an easy matter to know whether a stairway is defective and what repairs will put it in order . . .[,] but how can one know what measures will protect against the thug, the narcotic addict, the degenerate, the psychopath and the psychotic?' (*Goldberg v. Housing Auth. of Newark* (1962) 38 N.J. 578 [186 A.2d 291 at p. 297].)" (*7735 Hollywood Blvd. Venture v. Superior Court* (1981) 116 Cal.App.3d 901, 905.)

The case before us is a classic example of a plaintiff relying on ipso facto conclusions. Plaintiff's speculation of proper security measures not previously described in discovery cannot be used here. As *Nola M., supra,* 16 Cal.App.4th 421, recognized,

"where an open area . . . could be fully protected, if at all, only by a Berlin Wall, we do not believe a landowner is the cause of a physical assault it could not reasonably have prevented. [Citation.] [¶] Otherwise, where do we draw the line? How many guards are enough? Ten? Twenty? Two hundred? How much light is sufficient? Are klieg lights necessary? . . . Does it matter if the [complex] looks like a prison? Should everyone entering the [complex] be searched for weapons? Does every shop, every store, every manufacturing plant, have to be patrolled by private guards hired by the owner? Does a landowner have to effectively close his property and prevent its use altogether? [Citation.] To characterize a landowner's failure to deter the wanton, mindless acts of violence of a third person as the 'cause' of the victim's injuries is (on these facts) to make the landowner the insurer of the absolute safety of everyone who enters the premises." (*Id.* at pp. 436-437, fn. omitted.)

In short, plaintiff cannot prove that defendants' omissions were a substantial factor in causing Chandler's death, and he cannot prove causation as a matter of law. Accordingly, the trial court properly granted summary judgment for defendants.

III. DISPOSITION

The judgment is affirmed. Defendants are entitled to their costs.

_____
Baskin, J.*

We concur:

_____
Reardon, Acting P.J.

_____
Rivera, J.

* Judge of the Contra Costa Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.